

N.D.A.G. Letter to Nelson (July 7, 1989)

July 7, 1989

Ms. Carol S. Nelson
Barnes County State's Attorney
P.O. Box 209
Valley City, ND 58072

Dear Ms. Nelson:

Thank you for your May 3, 1989, letter concerning a county employee compensation and classification plan. According to your letter, Barnes County has hired consultants to prepare a County Employee Classification and Compensation System (county system). Barnes County Social Services has requested removal of its employees from the county system. This request was based on a belief that the county system is incompatible with the State of North Dakota Personnel Policies Manual (merit system). Enclosed with your letter were materials presented by the director of the Barnes County Social Services Office, Don Nelson, as well as a copy of your own January 27, 1989, letter to Mr. Nelson. Your belief is that Barnes County is bound to follow merit system policies for county social service staff and that the county system is binding on social service staff. You observe that complications will come up with social service staff under the county system, but that these complications can be resolved. Finally, your advice to the county commission will be that the county is bound by both plans.

The essential issue is whether the county may have a county system which covers county social service employees, or if county social service board employees are exclusively under the merit system. However, that issue need not be resolved because, in either case, the merit system provisions would supersede any conflicting county provisions.

The North Dakota merit system policies are, indeed, binding on the county social service board. See 1981 N.D. Op. Att'y Gen. 323. There is no provision in North Dakota law that makes the merit system exclusive. Theoretically, at least, a county system could exist, and both systems could be binding upon the county social service boards' employees. Of course, the greater the two systems are at variance, the greater the likelihood of complications arising which cannot be resolved without the provisions of one system prevailing over the other. In any case, in cases of conflict between provisions of the two systems, the merit system must be followed. 1981 N.D. Op. Att'y Gen. 413.

A conflict does exist between the county system and the merit system policies in this case. The county system policy concerning "hiring rates" provides "employees will be hired at or near minimum of the pay range for their classification". In cases where the county system minimum is below the merit system minimum, the practice of hiring at the county system minimum would violate the merit system requirement. I assume that you are aware of the nature of this conflict and its necessary resolution.

There is another concern that does not arise directly from a conflict between the merit system and the county system. Rather, it concerns the governmental structure surrounding the county social service board and the responsibilities of the board. In Fuller v. Finger, 289 N.W. 805 (N.D. 1940), the North Dakota Supreme Court examined the relationship between the board of county commissioners and the county welfare board (now county social service board). The holding in Fuller v. Finger indicates that the county social service board is responsible for the selection of staff (within the constraints of the merit system). The county system adopted by Barnes County assigns to the county auditor and the state's attorney duties which, with respect to the county social service board employees, are properly the duties of the county social service board.

Enclosed are copies of the two 1981 Attorney General's opinions to which I have referred. Also enclosed are copies of a February 10, 1989, letter opinion issued by Nicholas B. Hall, Walsh County State's Attorney, and an April 25, 1989, letter that I sent to Ms. Jeanne L. McLean, Bottineau County State's Attorney, regarding Mr. Hall's opinion. Mr. Hall discusses at some length the import of Fuller v. Finger and the two Attorney General's opinions previously identified.

In summary, if the county has policies that apply to county social service board employees and there is a conflict between those policies and those of the merit system, the merit system requirements must prevail. Further, the county social service board has the duty of administering the program within its jurisdiction, including the hiring and administration of personnel.

I hope this responds adequately to your inquiry. If you have any other questions, please feel free to contact me.

Sincerely,

Nicholas J. Spaeth

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Enclosures